

ORAL HISTORY INTERVIEW

JOHN TOY



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Interview Conducted and Edited by:
Donald B. Seney in 1998
California State University-
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INTERVIEWER: DONALD B. SHINEY

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Editorial Convention

A note on editorial conventions. In the text of these interviews, information in parentheses, (), is actually on the tape. Information in brackets, [], has been added to the tape either by the editor to clarify meaning or at the request of the interviewee in order to correct, enlarge, or clarify the interview as it was originally spoken. Words have sometimes been struck out by editor or interviewee in order to clarify meaning or eliminate repetition. In the case of strikeouts, that material has been printed at 50% density to aid in reading the interviews but assuring that the struckout material is readable.

The transcriber and editor also have removed some extraneous words such as false starts and repetitions without indicating their removal. The meaning of the interview has not been changed by this editing.

While we attempt to conform to most standard academic rules of usage (see *The Chicago Manual of Style*), we do not conform to those standards in this interview for individual's titles which then would only be capitalized in the text when they are specifically used as a title connected to a name, e.g., "Secretary of the Interior Gale Norton" as opposed to "Gale Norton, the secretary of the interior;" or "Commissioner John Keys" as opposed to "the commissioner, who was John Keys at the time." The convention in the Federal government is to capitalize titles always. Likewise formal titles of acts and offices are capitalized but abbreviated usages are not, e.g., Division of Planning as opposed to "planning;" the Reclamation

Projects Authorization and Adjustment Act of 1992, as opposed to "the 1992 act."

The convention with acronyms is that if they are pronounced as a word then they are treated as if they are a word. If they are spelled out by the speaker then they have a hyphen between each letter. An example is the Agency for International Development's acronym: said as a word, it appears as AID but spelled out it appears as A-I-D; another example is the acronym for State Historic Preservation Officer: SHPO when said as a word, but S-H-P-O when spelled out.

Introduction

In 1988, Reclamation created a history program. While headquartered in Denver, the History Program was developed as a bureau-wide program.

One component of Reclamation's history program is its oral history activity. The primary objectives of Reclamation's oral history activities are: preservation of historical data not normally available through Reclamation records (supplementing already available data on the whole range of Reclamation's history); making the preserved data available to researchers inside and outside Reclamation.

In the case of the Newlands Project, the senior historian consulted the regional director to design a special research project to take an all around look at one Reclamation project. The regional director suggested the Newlands Project, and the research program occurred between 1994 and signing of the Truckee River Operating Agreement in 2008. Professor Donald B. Seney of the Government Department at California State University-Sacramento (now emeritus and living in South Lake Tahoe, California) undertook this work. The Newlands Project, while a small-to medium-sized Reclamation project, represents a microcosm of issues found throughout Reclamation: water transportation over great distances; three Native American groups with sometimes conflicting interests; private entities with competitive and sometimes misunderstood water rights; many local governments with

growing water needs; Fish and Wildlife Service programs competing for water for endangered species in Pyramid Lake and for viability of the Stillwater National Wildlife Refuge to the east of Fallon, Nevada; and Reclamation's original water user, the Truckee-Carson Irrigation District, having to deal with modern competition for some of the water supply that originally flowed to farms and ranches in its community.

Questions, comments, and suggestions may be addressed:

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For additional information about Reclamation's history program see:
www.usbr.gov/history

**Oral History Interview
John Toy**

Seney: My name is Donald Seney. I'm with John M. Toy at the headquarters of the Placer County Water Agency in Auburn, California. Today is August 26, 1998. This is our first session, our first tape.

Good morning. People call you Mal, actually, a diminutive of your middle name, which is Malcolm. When other people have referred to you in interviews, and several have, they've always said Mal. So when people read this, they'll know you're the same person.

Toy: Right.

Seney: How did you get to the Placer County Water Agency?

Coming to Work for the Placer County Water Agency

Toy: Well, my engineering career started in the city of Los Angeles. I was an engineer with the city for about twenty years and decided to pull the family out of the big city. Life was going downhill, as far as I was concerned, and moved up to Placer County.

Seney: You mean, not personally, but the life around you in the city.

Toy: Yeah. The quality of life was deteriorating rapidly. So we moved to Placer County, [I] found a job with the city of Roseville. I was in environmental utilities structure.

Seney: What year would that have been?

Toy: '92. And then spent two years with the city of Roseville and then the last threeish or so with Placer County Water Agency.

Seney: Tell me a little about Placer County Water Agency. What is the service area for the water agency?

Placer County Water Agency Functions

Toy: The service area the entire boundaries of the county of Placer, but the main bulk of our work is purveying treated and raw water on the western side of Placer County, basically from Auburn down to Roseville.

Seney: What percentage of your business is that?

Toy: Essentially, about 85 percent. It's only been in the last couple of years that we've been much more active in water resource issues throughout

Bureau of Reclamation History Program

the county; hence, that's where I've been focusing more on the eastern slope. As the new guy on the block in the planning—there's two of us—basically I have the east slope, and the fellow I work with, he focuses on the west slope.

Seney: So as the new guy, you got stuck with the east slope.

Toy: Right, breaking new ground. As I jumped into the east slope and looked at the issues, one of the ones that was on the table was the Truckee River Operating Agreement [TROA] negotiations.¹

1. “More than 27 years in the making, the Truckee River Operating Agreement (TROA) now guides use of the river that winds nearly 120 miles from the mountains of Lake Tahoe to Pyramid Lake and is the primary water source for Reno and Sparks. The long-pursued plan brings the Truckee River’s management into modern times, protects the area from protracted droughts and offers a promising future for the region....

The agreement brings an end to historic uncertainty between Nevada and California over distribution of the river’s water, allocating 90 percent to Nevada. Beyond enhanced drought storage for the Truckee Meadows community, it modifies the operation of federal and selected non-federal reservoirs in the river system to protect and improve water quality and enhances conditions for the endangered Pyramid Lake cui-ui and the threatened Lahontan cutthroat trout. By retaining more water in upstream reservoirs, TROA also expands the range of recreational opportunities, including boating and fishing.”

(continued...)

- Seney: Before we get into that, let me ask you a little bit more about how the water agency works. Who owns most of the water rights in the county? Do you have a monopoly—that is, the Placer County Water Agency—on water rights?
- Toy: Again, on the western slope—it's been separated, western slope from eastern slope. On the western slope, we do have the primary water right on the American River.
- Seney: How much water can you take out of the American River?
- Toy: A little over 250,000 acre feet, something on that order. But there's another water right that we have been using historically in this Placer County side, and that's from P-G&E [Pacific Gas and Electric Company]. P-G&E owns water rights on the Yuba-Bear [river] system. We have a contract from P-G&E for 125,000 acre feet, and we've been using that water predominantly since 1960 to today. We're at the point of just by using all that water, and now we're looking at bringing in our American River water right and serving that to western Placer.

1. (...continued)

See, Truckee Meadows Water Authority, "Truckee River Operating Agreement," http://tmwa.com/water_system_settlement/ (Accessed 2/2019)

Seney: It's the Water Resources Control Board that determines who has these rights, or at least firms them up, right, and gives the permit. You tell me how it works.

Toy: There's two avenues that you can have: water rights or water contracts. Water rights is through the California Water Board. That's where we have gone in and we have put in improvements and made two reservoirs, French Meadows and the one right next to it, Hell Hole. With those reservoirs, we've gone to the Water Right Board and said, "We've made these improvements. We think they're good for X amount of acre feet," and they approve that.

We've also gone to the feds and said, "On the American River system, we want to get a contract for 117,000 acre feet, and they have agreed to that contract. So that's how we have those two blocks of water on the American River. And just like I said, with P-G&E, we went to them and said, "We would like to work with you on a contract for 125,000 acre feet," and they said, "Fine. Sign on the dotted line, and here's the charges."

Seney: Well, they're happy to have you develop the water, because that gives them a demand for power and the other service they provide, right?

Toy: Correct.

Seney: And they'd just as soon not supply the water. That's not their business. So if you'll do that.

Toy: Well, it's a little big unique in us developing the two dams in that [watershed].

Seney: Those are on the American River, the Hell Hole and the French.

Toy: They're on the Middle Fork of the American River. There's a North Fork, Middle Fork, and a South Fork. The Middle Fork and the North Fork are within Placer County. Most of the water that hits the watersheds fall on the Middle Fork, and that's why we put the reservoirs there.

Well, the background to how we became, we became partners with P-G&E on the Middle Fork Project. Placer County, at that time, was developing the project, didn't have the funds, and went and looked for a partner, and the partner that came out of the woodwork was P-G&E. The relationship is, P-G&E would finance the project and would operate the power system and get power revenues through year 2013, and that would return them their monies, plus ~~their~~ [a return on their investment].

Seney: So on these two reservoirs, you have power

generation, as well.

Toy: Right. And so they are the operator. We have a budget through them. In the year 2013, they're out of the project and it's fully ours. And so that's how we found a financial partner, and that's how we figured out a deal that met both needs.

Seney: Likely beyond that, though, you'll renegotiate a contract with them for sale of the power to them?

Toy: Potentially. It may be to anybody. We will find a partner wherever. In deregulation, who knows where we're going? But in this relationship now with P-G&E, the power revenue drives the project. We have to work our water releases for our needs. The water is released to turn the turbines to run the power, but once it's released, we can sell the water, and each year we work out a schedule to meet both our needs. Now, when it comes to year 2013, then we will have to look at a new schedule as to what's our water demand, and now that we're running the power side, do we get more money from spinning it for water or for power.

Seney: And when do you do that.

Toy: Right. So it's a timing of release. Well, it could be a new game.

Seney: Are there any other constraints on the way you have to operate those reservoirs in terms of downstream users and cultural users?

Toy: The constraints come from the federal government in the Federal Energy Commission, the FERC licensing, and typically the added element is for the fish and wildlife downstream, so there's minimum releases to meet those needs.

Seney: So you have to operate within those constraints, too, as well as the other things .

Toy: That's correct. And that game is changing in that FERC relicensing was a very narrow conversation between the federal government and the agency that was using the water, that owned the system. Now it becomes an open free-for-all for the environmental groups, the sports fishermen, and everyone else who would like to see water go directed to more environmental or recreation needs, and so they now have a say. It's a much more open community in these FERC relicensing.

Seney: I suppose for water supply purposes, M&I [municipal and industrial] purposes, you want

pretty much a steady stream coming out of it, maybe a little more in the summer when people are watering.

Toy: Definitely more in the summer than in the winter. You can have 50 percent higher in the summer, 80 percent higher.

Seney: Given the lawn-watering demands and that kind of thing.

Toy: Right. Essentially, that's it.

Seney: Here in California, of course, people stop watering in, what, October, November, when it begins to rain. You have very little watering at that time.

Toy: Right. October through March, there's very little watering because of the rainfall in this area is pretty heavy.

Seney: And the fishermen would like that released a good deal during the summer, I would think, but maybe some in the winter, too, to keep flows up?

Toy: The reality is, spring, fall, and summer, because there's spring chinook, there's fall chinook, and they come up river, they spawn, and they go

down river; and essentially all three times of the year, short of the dead of winter, which has a pretty high natural flow, they're looking for enhanced flows to support chinook and salmon fisheries.

Seney: So they're not so far what you want.

Toy: Not too far off, but, you know, there's a fundamental different in point of view, where they come in with high demands and we lobby for lower demands, and we find a middle ground.

Seney: Negotiate it out.

Toy: Right.

Seney: So that's 200,000 acre feet over there on those two reservoirs.

Toy: Well, in the Middle Fork, with water rights is 120,000 acre-foot, specifically. Our contract with the Bureau is 117, and with P-G&E it's 125. So roughly, I didn't do the math here, but it's 350,000 acre feet that we use. The bottom line is, that's a lot of water, and we could call Placer County water rich. Placer County, in the fifties and sixties, was very smart in making those contracts and envisioning needs to that level. Other counties were not so fortunate or

so wise. Like El Dorado County. They were entertained as a partner on the Middle Fork, and they opted out, and El Dorado, unfortunately, they gave away some of their water rights to SMUD [Sacramento Municipal Utilities District].

Seney: For the nuclear power plant.

Toy: Right. And now El Dorado County is short on their water supply to meet their dump needs. They made decisions that seem to haunt them right now.

Seney: This is actually, we shouldn't blame the county so much as the El Dorado Irrigation District, specifically.

Toy: Or the decision makers, whoever they are. I just use euphemistically El Dorado County. Some counties made good decisions. Yuba County made good decisions in building a reservoir that has a lot of water, and as a result, they have high revenues that go far beyond what the water agency needs. They have a relationship with the county for general services, where their revenue's going to there. So there's certain counties that have been blessed, and also smart, and Placer County is one of them.

Seney: What's been the growth—you've got 325,000 acre feet. You say you're water rich. How much are you using at this point on the western slope?

Population Growth and Water Availability

Toy: We're using about, I'd say on the order of about 130,000, 140,000.

Seney: Wow. And the growth has been considerable, hasn't it?

Toy: It's taken off [in the] late eighties. It was fairly quiet. Before that, the reality was, the hub was Sacramento County, and as it started building out, it got to the point where it spilled over into our county. And now Placer County is deemed desirable because of its open space and its undeveloped ag land, and that's where industry is going and that's bringing the residents. So now Sacramento County is perceived to be near built-out. There's areas near the airport and Natomas area that's now growing. But by and large, they're built out, and now the rush is hitting Placer County, and now we're, I believe, one of the fastest-growing, if not the fastest-growing county in California.

Seney: But with as much water as you have, you don't foresee a problem for some time, I would think.

- Toy: No. Basically, our view to the county general plan and city general plans is that there's sufficient year to year 2030 and beyond.
- Seney: Why don't we talk, then, about the eastern side, which you began to mention the TROA and whatnot. Was there involvement by anyone here before that in Public Law 101-618 or the negotiations and the run-up to Public Law 101-618?²

2. Public Law 101-618 became law on November 16, 1990. The law contains two acts: The Fallon Paiute-Shoshone Tribal Settlement Act and the Truckee-Carson-Pyramid Lake Water Rights Settlement Act. The main topics of the legislation are:

- Fallon Paiute-Shoshone Tribal Settlement Act
- Interstate allocation of waters of the Truckee and Carson rivers.
- Negotiation of a new Truckee River Operating Agreement (TROA)
- Water rights purchase program is authorized for the Lahontan Valley wetlands, with the intent of sustaining an average of about 25,000 acres of wetlands.
- Recovery program is to be developed for the Pyramid Lake cui-ui and Lahontan cutthroat trout
- The Newlands Project is re-authorized to serve additional purposes, including recreation, fish and wildlife, and municipal water supply for Churchill and Lyon Counties. A project efficiency study is required
- Contingencies are placed on the effective date of the legislation and various parties to the settlement are required to dismiss specified litigation.

Source is: http://www.usbr.gov/mp/lbao/public_law_101-618.html

(continued...)

Placer County and Public Law 101-618

- Toy: Involvement from the west slope, I suspect very little to none.
- Seney: There were no files lying around for you to review of correspondence or reports?
- Toy: That's right. My understanding was, the involvement was a corps of folks on the east slope, and that being, as I understand it, David Antonucci³ from Tahoe City P-U-D and Peter Holzmeister, Nevada County based, from Truckee-Donner P-U-D. Those two seemed to be the two public agencies that supported and were very involved in the [interstate negotiations]—I think even back to the Compact discussions and to the law. They were the two biggest purveyors, and they had the time and the interest and the wherewithal, and they followed it [to be actively engaged]. So those folks, when I talk to them, they seem to have the understanding of the history.

2. (...continued)

(accessed December, 2011).

3. David Antonucci participated in Reclamation's Newlands Series oral history project. See, David C. Antonucci, *Oral History Interview*, Transcript of tape-recorded Bureau of Reclamation Oral History Interview conducted by Donald B. Seney, edited by Donald B. Seney and desktop published by Brit Allan Storey, senior historian, Bureau of Reclamation, 2009, www.usbr.gov/history/oralhist.html.

- Seney: Well, of course, the interstate allocation on Lake Tahoe affects them.
- Toy: Absolutely.
- Seney: And the gross diversion permitted on the upper Truckee [River].
- Toy: And Truckee-Donner P-U-D [Public Utilities District], they're the biggest purveyor in Martis Valley. Placer County development was very low back then, and is now. It's just starting to build out. So the big guys on the block were those two.
- Seney: What is Placer County's interest, and how far does it run? How far does Placer County run to get to Truckee? How near is it to Truckee?
- Toy: Well, Placer County is due south of Truckee. Placer County, when you look at the Martis Valley in the Truckee River basin, about half of the basin is in Placer County and half of it is in Nevada County. So geographically, we're split 50-50. But when you look at people [now] on the land, there's about under 10 percent of the people are on the land in Placer County and 90 percent are in Nevada County, and that 90 percent, the bulk of them are in the town of Truckee. So that's how the layout is.

Seney: But your area is beginning to be more developed, isn't it, up there, and you're getting more construction.

Toy: That's right. It's just in the last couple of years that Placer County is experiencing growth. As a baseline, Placer County developed the Martis Valley Community Plan, and it looked at what was happening current to 1975, and there was around about 500 to 1,000 residents.

Seney: This is your portion of Martis Valley?

Toy: Right, the Placer portion. The plan envisioned in the next twenty-five years, there would be a new town, a twin to the town of Truckee, and the population would be 27,000. What really happened in the intervening years to about a year ago is, basically nothing happened. It was just status quo. It seems like the population is under 1,000, still about under 1,000, in Martis Valley, in the bottom of the valley, and there's been some growth to the shoulders of the valley, being the Northstar area. The ski resort, there's been a little bit of development in its ability for ski runs. Housing has developed to some extent, a couple hundred homes.

Seney: Is Northstar in Placer County?

Toy: Yes. Here I'm talking all the Placer County

story. So Northstar is in Placer County on the southern shoulders, the foothills of the Martis Valley. Within Martis Valley, there's been some built-out in Northstar.

Interesting enough with Placer County is that there's islands of growth, and I think it's true of all the areas within the Truckee River basin. Another island of growth has been Squaw Valley, and Squaw Valley has planned growth in the ski resort area. Interwest [corporation] has come in from Vancouver, and they're developing a base recreation town of shops and ski area condos and things like that. So what we're seeing is Squaw Valley is starting to have a major step in development. It's last step in development was for the Winter Olympics, 1960. So here again, a large hiatus, and now growth is happening.

Let me step back to Martis Valley. In the base of the valley, there's been a large developer come in to develop a golf course and 380 homes, a closed private subdivision, high end, that we, the Placer County Water Agency, is going to be the water supplier. They'll use ground water. The developer's put in two wells and supplying the homes and the golf course. The homes are clearly high end. Jet traffic has increased in Martis Valley because of folks

coming in on their jets from all over the nation. The growth, the development, has been timed perfectly, so the sales have been robust, and now other large landowners, and there's about six on the Placer side in Martis Valley, are looking at that and saying, "Hmm, how much growth can be sustained if we leap out there and develop?" So we're on the cusp of significant growth. It's all recreation-based, by and large, second-family homes.

Seney: Large lots?

Toy: Large lots, a half acre, but in this Lahontan subdivision I'm talking about, this new development, folks are coming in, buying four or five lots, putting up one large house. So it's going to be a large lot with a large house. So that's where they're coming in, and it's the second home.

Seney: What's the implications of that kind of development for water purveying, from your point of view? Let me ask, will the developer put in the water system?

Toy: Yes.

Seney: They'll pay for it. Then they'll deed it over to you, and you will operate it?

Toy: Correct. The implications are, it's going to start taxing, not up to the point of beyond what the aquifer can supply, but it's going to start a rapid increase in the demands of groundwater from both the Placer side and the Nevada County side of the aquifer.

It's interesting, 50 percent of the aquifer sits on both sides of the county line, between Nevada County and Placer County, but the richest part of the aquifer is on the Placer side. It goes down about a thousand feet, where wells are drilled that have a capacity of 2,000 gallons a minute.

Seney: That's a pretty good capacity.

Toy: That's very high. That's very rich. It's very rich for that area. It may be higher in the Central Valley in California, the big ag area.

Seney: Will you have to pump that or will that just come out?

Toy: No, it has to be pumped. But on the Nevada County side, the bulk of their area, they're lucky if they get a couple hundred gallons a minute, because the aquifer is much shallower on the Nevada County side. So the reality is, there's going to have to be some sharing of the aquifer

between the two counties. We're going to have to work in hopefully a cooperative fashion.

Seney: Will that happen, do you think? What's your relationship with Nevada County like?

Toy: It's good, and I think it's getting better, but there's always a competition in that land-use plans. The use of groundwater is first come, first served, and it becomes a rush to the pump house. Our intention is to work cooperatively. It'll have less feathers ruffled if you do it that way.

California Allocation under Public Law 101-618

But there's a fly in the ointment when it comes to the Settlement Act in that the state of Nevada is allowed to use California groundwater, like Martis Valley, under certain conditions. They can use it so long as it doesn't interfere with our use, and their use can happen so long as it also doesn't exceed the safe yield of the basin. So they're allowed not firm water, but they're allowed to use that water, so-called temporary water. But we're concerned . . .

Seney: Let me ask you, does that mean they can dig wells and pump the water into the Truckee River? Is that how that would work for them to make use of it?

Toy: Well, it's not clear. It can happen that way, if they have land that they can get approvals to dig wells. Or they can have a local purveyor pump water and divert it into the river, and it's sent down the river to Reno. So there's a couple of ways it physically could happen. How it will happen actually, don't know. But my point is, the Settlement Act allows Nevada to use the water on a temporary basis.

Seney: Now, we're talking about the 32,000 acre feet gross diversion that the public law gives to the California side.

Toy: That's correct.

Seney: And as long as they don't interfere with that, through this pumping they're allowed to do that.

Toy: Well, it's even a more limiting feature than that. Each basin may have a safe yield, meaning you can pump without having negative effects. That could be much, much lower than 32,000 acre-feet. I think the current number for the Martis Valley is something on the order of 13,000.

Seney: That's the major aquifer for the population in that area, isn't it?

Toy: That's the major aquifer. There's additional

aquifers in Nevada and Sierra County, but they're much shallower and their capability to produce is much less.

Seney: Public Law 101-618 in TROA says that of the 32,000 acre-foot gross diversion, 22,000 feet can come from ground water and 10,000 acre feet from surface diversions off the Truckee [River] itself.

Toy: Or the Little Truckee [River] or any surface water.

Seney: Right, exactly. Prosser Creek, Independence Creek. I'm sorry, you're right about that. But if you've only got 13,000 acre feet in the Martis Valley, the major aquifer, where does the other 9,000 acre-feet come from?

Toy: It would have to come from diversions off the Truckee River. What you're posing is a reality check. The law has given the basin an allocation. The reality check is that where you are geographically determines where the water is that's feasible and cost-effective to reach. Some areas may not have groundwater and maybe all have to acquire surface water. Some areas may have a lot of groundwater and may exceed that and will have to supplement it with surface water. So each area will have its own challenge to figure out what's the best

combination of groundwater/surface water to meet the needs of development at a reasonable price.

Seney: Maybe I didn't ask that properly. Again, my understanding is there's a limit of 10,000 acre feet of surface water can be diverted.

Toy: That's correct.

Seney: And 22,000 now comes from, the rest of that comes from groundwater.

Toy: The basin, within the basin.

Seney: Any groundwater within the basin.

Toy: Right.

Seney: Drilling the well, pumping, in other words.

Toy: Right.

Seney: But you're saying that there's only 13,000 acre feet, apparently, in the Martis Creek Reservoir, or aquifer.

Toy: Martis Valley aquifer?

Seney: Right. And so if you take all 13,000 acre feet

out of that, then you could take another 10,000 feet off the surface. You're up to 23,000 feet under the allocation, because 10's all you can take off the surface. Where's the other 9,000 acre feet going to come from? That's got to come from groundwater.

Toy: Well, I'm not sure where your getting your numbers from, because the 32,000 acre feet that is allocation to meet the needs of all development within three counties in the basin.

Seney: It's possible I may have made a mistake.

Toy: Now, when you talk about the Martis Valley and what are the needs in Martis Valley, I've run some numbers that says that the build-out needs of Martis Valley are like on the order of 17,000 to 18,000 acre feet. So that says that, if that 18,000 is true and that the interim safe yield of the basin is also valid and remains that, to meet the build-out, you would need 13,000 pulled out of the aquifer and 5,000 from a surface water supply like the river. So that's 18,000.

Now, there are still other needs within the basin, from Alpine Meadows, which [is] a canyon off the Truckee River south of Lake Tahoe. There's Squaw Valley that has water needs. And also, there's water needs in unincorporated Nevada County, which includes

out by Verdi, and Sierra County, which is quite rural. So all those needs, we think the number is, when you add those needs to what I just laid out in Martis Valley, it'll still be less than 32,000 acre feet.

The point I raise is, arithmetically it works out. Then the question is, where do you find the water where the need is? Is there cheap groundwater? Is there a river near you? That's the challenge in the future.

Seney: I have the draft TROA in front of me, and, you know, I don't see the figures in here, but I swear they're in the public law, and I thought they were also in the TROA.

Toy: You are correct on the 32,000.

Seney: The gross diversion 32,000.

Toy: Right, the allocation. That is correct. What I'm telling you the story is, where are the needs.

Seney: Right. I understand that. But then there's another fly, maybe a buzzard in the ointment here, and that's the problem of depletion under the TROA, whether or not all those 32,000 acre feet, California's going to be allowed to divert them. Talk about that depletion issue and how

that came up and how you see that.

END SIDE 1, TAPE 1. AUGUST 26, 1998.

BEGIN SIDE 2, TAPE 1. AUGUST 26, 1998.

Depletion Issue for California under TROA

Toy: The depletion story, as I understand it, the theme of using depletion as a controlling factor for California's use started in the Compact days. It was first proposed not to have a gross allocation, but to have a gross depletion, and what I understand is that the negotiators, after they said, "Let's think about depletion," they just couldn't get their arms around how to describe that depletion number to make both sides understand what it meant. So they said, "We can't figure out and negotiate a depletion factor, so let's scrub that and let's just go to a gross allocation."

I think the story was, "Well, they were working at a depletion of 16,000 acre feet. Let's just double it and make the allocation 32." That we can understand, because diversion to an allocation means a meter, and everyone understands a meter for measuring your diversion. And so that diversion number, allocation number, was put into the act.

Then we started negotiating the TROA, I

believe it was the state of Nevada said, "Well, we're concerned how much of the water you're going to use under the allocation, how much is actually going to be returned to the river." They said, "We won't sign TROA unless, California, you agree to a depletion number." California first said, "Time out. We've already gone through that exercise, and we just want to talk allocation. And it's already in the act. It's hard-wired." But Nevada State persisted, and they said, "We want a number, 15,000, as the depletion number on top of the allocation number." California unilaterally said, "We want seventeen," and they split the difference. I think it's sixteen-five or whatever the number is.

Seney: Not deplete more than 17,600 acre feet. This is the draft TROA.

Toy: You're right, seventeen-six. So California had a higher number, and it was agreed on seventeen-six. Basically, I think that number came from depletion of 50 percent. That was Nevada State's position. California said, "No, we want 60 percent," and they split the difference and it was 55 percent.

Seney: Every time you hit the table, it picks it up. The transcriber will kill me if I don't say something.

- Toy: I won't do that again, transcriber.
- Seney: Mr. Toy is emphasizing his points here, because they are important here in California, on the California side.
- Toy: So I think how we came up with the depletion number is agreeing that California would deplete 55 percent of its allocation, and that evolved into the number of 17,600.
- Seney: Now, does this mean that you can still take the 32,000, or how much can you actually take?
- Toy: Well, let me answer that in the time frame. When California agreed to the depletion factor, it thought, or its gut feeling was, the gut feeling of the team was that it wouldn't impact full use, that you would reach full use of the allocation before you hit the depletion number. We were very concerned—
- Seney: I'm not sure I understand that. In other words, you could take the 32,000 acre feet, and you still would not have hit the 17,600?
- Toy: Correct. That's what the California negotiating team felt and said that the limiting factor would be the allocation, not the depletion number. So we had two points. Why even agree to a depletion number if that's the case; and we're

not sure, where's your numbers? That was a large bone of contention.

And the third bone of contention was, "California, you agreed to that without consulting the locals, who are going to be impacted, and that really causes a problem with us on the issue of trust and where are you guys coming from." So that caused a severe rift within the whole California interest base, which we have, to this point, really never gotten over. That's been the source of one of our concerns about the California team.

Seney: My understanding is, just as you say, that they—one of the California people—in fact, Kathleen Eagan⁴—said she came to—apparently there's an organization of the local water people. You're on it. Mr. Antonucci is. Craig Woods from the Tahoe Truckee Sanitation Agency [TTSA].

Toy: It's called the Truckee River Basin Water Group.

4. Kathleen Eagan participated in Reclamation's Newlands Series oral history project. See, Kathleen Eagan, *Oral History Interview*, Transcript of tape-recorded Bureau of Reclamation oral history interview conducted by Donald B. Seney, edited by Donald B. Seney and desktop published by Brit Allan Storey, senior historian, Bureau of Reclamation, 2011, www.usbr.gov/history/oralhist.html.

Seney: Yeah. Who am I missing? The Nevada County Water Agency is there, and a couple Donner P-U-D.

Toy: All the purveyors within Placer County, Nevada County, and there's no single purveyor in Sierra County, but County Public Works. So it's the water purveyors, the county organizations, the town of Truckee, and interested parties. We're all sitting in this *ad hoc* group called the Truckee River Basin Water Group, and the whole point of our existence is to support the California team in giving them information from the local perspective and helping them on California interests locally for their negotiations.

Seney: In her interview, Kathleen Eagan was quite candid and self-critical when she said she didn't really understand what that meant, and when she came to you guys and said, "This is what they want to do," and apparently there was a good deal of hollering and shouting and, figuratively speaking, when you said, "My God, don't you understand what this means? This means a lot less water for us." She said she didn't understand that and did once you educated her on that point.

Toy: Yeah. Well, I recall that. When she had called, we were hollering at the state. We, who were

the water purveyors, who knew what depletion was all about and the unknowns about it, and we were just star struck or aghast at the state for agreeing to something that they didn't even have a handle on that could actually or potentially limit our use of the allocation that was hard-wired in the act, and to do that unilaterally, we thought, was really a dumb move.

The other dumb move was to make that unilateral commitment without getting anything for it, getting something for that gift. There wasn't a counterproposal to say, "We want something for this major concession." So that really bothered us and it really questioned the interest and the backbone of our California team. Were they really representing California or were they so interested in making a deal that they were willing to make a potential high concession? That gnaws at us even to this day.

Seney: You look angry, as a matter of fact, as you're talking about it.

Toy: Yes.

Seney: The tape won't see your face, but clearly you're not happy with this.

Toy: No doubt. It's been a bone of contention ever

since, and the more we have talked to the various government officials, we are convinced that California's master strategy is to make a deal and get out of Dodge with the minimum ruffling of the feathers of the other parties.

Seney: Why would they care about ruffling the feathers of—when you say the other parties—

Toy: No one on California has answered that to our satisfaction, but we have our own theories on the big picture. We sense that California, when it comes to water supply issues, has various large issues that they're working on: the Bay-Delta issue,⁵ meeting water quality, fish and wildlife needs in that area, plus supplying north and southern California. Big issue. They're putting their big guns there.

5. Referring to the delta of the San Joaquin and Sacramento rivers—often referred to as the Bay-Delta. This is located on the northeast quadrant of San Francisco Bay (San Pablo Bay). The water from the Delta exits to San Pablo Bay through the Carquinez Straits. “The Bay Delta Conservation Plan (BDCP) is a part of California’s overall water management portfolio. It is being developed as a 50-year habitat conservation plan with the goals of restoring the Sacramento-San Joaquin Delta ecosystem and securing California water supplies. The BDCP would secure California’s water supply by building new water delivery infrastructure and operating the system to improve the ecological health of the Delta. The BDCP also would restore or protect approximately 150,000 acres of habitat to address the Delta’s environmental challenges.” See baydeltaconservationplan.com (Accessed June 2014).

The other big issue is the water supply to the far southern California, the Imperial Valley and the San Diego area. That's another large water problem that also is linked to Nevada interests, because the water comes down their state. Our sense is that that water issue, that interstate water allocation issue, affects a lot more people. It affects millions of people down in the Imperial Valley and San Diego area. It affects southern Nevada, which is basically the Las Vegas area. Two big growth areas of both states, and that's where the eye is on the ball from the two states.

We feel that California, to make gains down on that southern problem, are willing to take what it has on the federal act in the Truckee River basin, where there's on the order of tens of thousands of people, 20,000, 30,000, as opposed to 5 million, 10 million, and maintain a low profile and less aggressive negotiating position on the Truckee River basin and cut the deal there. And that's why I believe that when the state of Nevada, the state engineer said, "We're going to pull out if you don't agree to depletion." California read that as a signal, saying, "We've got to work on that issue and not just stonewall them because of the linkage to down south."

That's our take as to what's at stake on the statewide scene and why California essentially rolled on that issue. California has a different spin on it, but we don't buy it.

Seney: What is their spin? What are they telling you?

Toy: They felt that the depletion wasn't harmful.

Seney: Again, you wouldn't get to the depletion number until you've taken all the water you could, anyway.

Toy: Right. And number two is that if we stonewall the state of Nevada and TROA negotiations disintegrate, that if that issue went to the Supreme Court, that the issue on the interstate allocation would be based upon current uses. And the current use clearly is much higher in the state of Nevada, both for environmental and for people needs, than on the California side and that the reality is, we would get less water under that scenario of going to the courts than under the Settlement Act and these negotiations.

We countered by saying, "We agree with that scenario, but that doesn't mean you have to roll over on every hardball shot taken at us during the negotiations.

"That gets back to the trust issue. You

rolled over unilaterally. You didn't come to us and say, 'Here's the grand strategy, and here's the trade-offs. Here's what we're thinking.'"

Maybe they didn't want to, maybe they didn't know what they were thinking, but the reality is, they didn't do that. And so we have a major trust issue on California representing the needs of what we think is a small area. But to the folks in that small area, that's their livelihood. It's recreation based.

Seney: Right. When we say depletion, what we're talking about, for people who'll read this later who aren't necessarily familiar with all these details, is that when you take an acre-foot of water out of the Truckee River or out of the groundwater aquifer, the question is, how much of that acre-foot is going to get back into the Truckee River for use downstream by the Nevada interests.

Toy: Right.

Seney: They claim only 55 percent of that is going to get back into the river, right? That's the number that's been settled on?

Toy: Well, depletion is the portion of the amount of water that acre-foot that doesn't return to the

river.

Seney: Right. I'm sorry, I should have said it the other way around.

Toy: Downstream, Nevada State is very concerned how much water returns to the river system, and the reason is, is that the Settlement Act basically says, "In the Truckee River basin, California, you're given an allocation. In the Tahoe Basin, both California and Nevada is given an allocation. And the rest of the water that falls in those two basins, the remainder is allocated to Nevada."

So they're very much interested in the remainder. That's why they're interested in depletion. That's why they're interested in how much water we return from our allocation. Their interest is to maximize that amount, and our interest is to maximize the use of our allocation for our needs. There's a conflict.

Seney: Your view is, if the legislation says you get 32,000 acre feet, that's what you get. Measured at the point of diversion is 32,000 acre feet. Whatever returns to the river is what returns to the river.

Toy: That's correct, with one large caveat. We say that, as far as the negotiation's concerned, that's

our position, because the middle step is, within California we are bound by prudent and beneficial use of that water. So we have laws that say you can't waste water.

But that's a California issue. That's a California internal decision that we make, that we don't want to lay on the table as far as you folks dictating what California should do. So that's where we thought we were. California has sovereign rights, and we get an allocation, we do with it as we do with all our water, use it in the best and safe way.

That's where California first came back to the state of Nevada, saying, "Here's the reasons why." And then they did the unilateral rollover.

Seney: I guess what Nevada's thinking about, too—and when we say Nevada, I think maybe we're talking about the Sierra Pacific Power Company, particularly, and the Pyramid Lake Tribe are the two who are maybe the most interested on the Nevada side of this issue of depletion.

Toy: No. I really think it starts with the state of Nevada.

Seney: Pete Morros.

Toy: Pete Morros, the state water engineer, because he represents the users of all the water, which is the Sierra Pacific, the Paiute Tribe, the Newlands Project, Washoe County, and all other small diverters along the river, the riparian folks. So Pete is saying those folks have a right to use of the water as it flows down the river, and so he represents everybody on that side. And I have no qualms with that. That's his job. I'd do the same.

Seney: Right. And you're trying to do it for your side.

Toy: Absolutely.

Seney: Yeah, sure. And I guess one of the things that I'm told they're concerned about over there is, as time goes by and you obey the California mandates for wise, beneficial, careful use of the water, you'll get more efficient and you'll return less to the river as a result. Is that part of it?

Toy: Well, that's the way we view how we'll be using our water, that we, as all parts of California, we envision that water conservation will be applied statewide.

You've just raised another issue on water conservation/water reuse that's going to smack us right in the ass with California agreeing to depletion, because the reality is that when you

have your acre foot of water and you're told to obey statewide conservation rules, you are going to use more of that acre foot, hence your depletion is going to increase. And so that's going to be a detriment to our area, the Truckee River basin, to make full use of the allocation.

What it, in effect, does the recycling/reuse marches the depletion criteria closer and closer to being the threshold where you can't use water anymore. So now we have a burden to watch to see if California is going to implement statewide water reclamation/water reuse criteria, because I think we're only one or two areas within California that has a depletion criteria that we would be hit by. No one else has a depletion criteria in their water use. And so here again, we potentially could be limited in the ability to use water because of statewide general decrees.

Seney: One of the things—and maybe this is not a good example. If it isn't, tell me. But one of the things that might come up, say, is a gray water system, where you would have a separate drainage on your sinks. Not on the toilet. Those would drain separately. But you'd have a gray water system, where you could use that then to water your plants. Now, I take it that would run up against this depletion problem,

would it? Would that be recycling and reuse?

Toy: It could. It could, but the question is, you don't know, because what one has to answer, which is on the burden of the backs of the locals is, what's the depletion of a gray water system versus the depletion of keeping it in a sewer line to a treatment plant? So now we have to convince the Nevada parties who are looking at our depletion calculations each year, is that depletion route any different, and is the number accurate?

But what we do know, it's going to become an accounting effort, and we're concerned that the locals are going to have to do the accounting, because it's in our interest; where the state could be saying, "Yeah, we're interested, but we only have two people. Could you help us assemble all this information, and we'll package it and send it as our requirement in the Settlement Act." So it comes back to us. Here we have another requirement that's going to require some bookkeeping, and who knows how rigorous the bookkeeping is going to be? It could be very simple, which in the early years of the TROA implementation our water use is very much diminutive compared to our allocation, so we know we're not going to hit allocation or depletion limits. But as we get closer and closer to it, we're going to have to

make sure every drop counts and every drop is accounted for in our calculations. Hence, the administrative effort. We see it's going to fall on the locals, because we keep on hearing from the state they're having a hard time getting a budget for post-TROA, because, again, small area, large competition for funds statewide, and the money's going to go to the big areas with the big problems. And we see the small areas, like the Truckee River basin, are going to have to carry the ball.

Local Water Purveyors Fund Depletion Study

Seney: Does it annoy you further that here you're have to be accounting to another state, that rather than to the state of California, you're going to have to account to Nevada and Sierra Pacific Power and the Pyramid Lake Tribe? Does that bother you?

Toy: To me, it's an acceptable burden. I mean, that's the trade-off of getting an allocation. We can see that that's life. The question is, why are we imposing self-inflicted pain by unilateral decisions to up the potential of limiting our allocation, up the potential of increasing our administrative burden?

The jab in the ribs on depletion even goes

further. After California agreed in principle to a depletion number, California's team said, "We will only agree to that number after we have developed and approved of the depletion criteria, how we're going to implement this number, what are going to be the equations, what are the use categories, what are the factors, and all this stuff." And California said, "We will take the first shot at developing a draft criteria."

That was last fall, and I was calling them on a monthly basis, saying, "When are you going to start the effort?" It was like January or February. They hadn't started the effort yet. They said, "We don't have the staff, we don't have the money."

So I stepped in and said, "I have a proposal for you. We, the local purveyors, will put up \$30,000 of our own money. We will hire a contractor, and we will do the study. Will you be a cost-sharing partner, because you guys aren't getting off the dime."

The TROA group formed a subcommittee of all the five parties, saying, "Okay, California. We're going to work through this depletion criteria. We're waiting for you, California, to do the first draft. Do the first draft. We'll look at it, work through it, however, and take it back to

the full TROA group."

California never got off the dime, and then they said, "Okay, we are willing to be a cost-sharing partner, but we don't know about the results and there's no guarantees we're going to take them forward."

I said, "Fine. But we've got to move forward. We've got to answer two questions. What is the depletion criteria numbers for each use? We really question whether there's much out there, so let's see what it is. And let's answer the question in the near term or at build-out, will the depletion criteria, will that hinder our full use of the allocation? Because you may not want to hear that answer, state of California, but we need to have some sense of comfort as to what in the heck did you guys buy into?"

We're still working on those answers as we speak. The answers are very preliminary. We just don't have an answer yet.

But the bottom line is, here's another example of California obligating itself to do something and not having the staff, the moxie, the wherewithal to figure out how to get it done, and the locals have stepped in to do a work block that they were supposed to do. This, to

me, is symptomatic of the future. I think we'll always be stepping in because of their lack of, I think, capability and ability to get funding. I say, fairly, the ability to get funding is not all within their purview. But that's part of the story that we have to deal with. That's the reality. We have to deal with the state just like we have to deal with the other parties across the state line. We say that's reality.

Seney: Who did you select to do the study? How did that happen? Who's going to do it?

Toy: I did the selection. It was Boyle Engineering, and the story is short. I worked with staff here and with our legal counsel, who is our water attorneys.

Seney: Who are they, by the way?

Toy: Kronick, Tiedemann, Moskovitz & Girard.

Seney: And so it's Susan—

Toy: No, it's Jan Goldsmith.

Seney: Jan Goldsmith, I'm sorry, yes.

Toy: Jan Goldsmith is our lead attorney.

Seney: She is for a number of other entities.

Toy: That's right. She's a ground water law expert, plus has a pretty good background, since the seventies, with the Compact, with the same firm.

We sat down and said, "Who are we familiar with? Who has done work that's in the region?" And Boyle came up, and I asked Boyle and said, "Would you want to undertake the study? Here's the nature of the work. Here's my concerns about the ability of you finding information." And they said, "Yeah, we're willing to entertain the work."

So I took them over to the California team and said, "Team, here's my proposal. Here are the folks, and I plan to hire these folks. We'll be lead. We'll fund them, but we're looking for reimbursement. And we'll have the work done in, I think, three months." And I reminded them that, "Whatever options do we have, since you guys didn't come off of the starting blocks?"

They said, especially Carol Hammon [California TROA team leader] said, "Yes, yes. I think that Boyle should start working on it immediately."

And so I got head nods that they bought in, and off we went. We got a contract. I went

with a tin cup to all the other purveyors and said
...

Seney: And they were willing to kick in?

Toy: Yeah. They were willing to kick in, and most of them did. I said, "I hope you guys pay up, because the reality is, if you don't, we're going to cover it all, because that's just nature—we're going to be lead and we'll take the fall."

Seney: You're a pretty prosperous water agency, are you not? I mean, you have a fairly decent—

Toy: Fairly prosperous. Compared to the east slope agencies, we sell a lot more water, and we have surplus water, from all the water we talked about earlier. So we have spot sales that we have revenues that we could use.

Seney: Let me put in the other tape.

END SIDE 2, TAPE 1. AUGUST 26, 1998.

BEGIN SIDE 1,TAPE 2. AUGUST 26, 1998.

Seney: My name is Donald Seney, and I'm with Mr. John M. Toy of the Placer County Water Agency, in the agency offices in Auburn, California. Today is August 26, 1998. This is our first session, and this is our second tape.

Let me start by asking you, as I listen to what you're saying about this depletion study, this is not the worst possible course of events, from your point of view, that is. Let me suggest this, that California has dropped the ball as far as overall putting this depletion in there. Now the question is, how do you measure the depletion? And they've dropped the ball on that and left that to you and allowed you to go out select an engineering firm.

While I don't want to be cynical enough to suggest that results will vary with who's doing the study. I mean, that does happen. We know that even in engineering matters, it can matter who does the study and who undertakes it. You might have done yourself a favor here, even though you have to pay for it yourselves, do you think, in terms of the actions you've taken here?

Toy: Sure, there's a positive side to doing the study. You raise the point that there is potentially some biases in who does the study. I think the biases are even heightened in that I believe there's so little information on depletion that a lot of it is judgment. So to try and work through that, we have made sure that the consultant really documents his estimates or his sources, so that, if anything, we establish the state-of-the-art or the baseline of information and that it's readable

ten or fifteen years from now so that other people, as information comes on line, they can see where we came from and where we're going. So we went in it with open eyes.

The other part is that we're probably more comfortable doing it ourselves than having the state do it, and if the state would do it, more than likely, given their hiring processes, they would probably do it with their staff more quickly than they would try and get a contract. And I question whether the staff could really get around beyond their own records in a timely fashion, where a consultant could. A consultant is charged to do just that type of work, and they're out over all three counties and looking at their own records, in their own offices, in other states. And so that's where we thought there was an advantage to all of us to have Boyle go ahead.

And the reality is, talking to the other purveyors, they didn't have anyone in mind who they saw as a depletion expert type of an engineering firm, and they said, "Go with Boyle, and we'll aim for peer review to work out our concerns or our questions."

Seney: Right, because you're all engineers. Mr. Antonucci is an engineer, and Craig Woods is an engineer. I mean, you all have that

framework of reference for this kind of thing. And, too, when you describe, as you have, California's political interest being down south and not wanting to ruffle Nevada's feathers, you see, a political scientist would look at one of these and say, "Well, the motivation here, then, is to put out a study." If the state were to do this, it wouldn't make you guys comfortable. "Oh, don't worry. Look at these numbers. We'll sign off on this. You'll be okay."

Your point of view, on the other hand, would be to have a study which raised a lot of questions and asked for a different number that was going to give you a greater zone of comfort. I mean, there is a political side to the way these kinds of things are done.

Toy: Oh, absolutely. That was one of the concerns of the state, saying, "Well, you guys have been very vocal that you don't support depletion, and we're concerned about buying into a study that you guys sandbag to make depletion look as bad as possible."

Nevada Wants to Count Reuse as Two Diversions

And we said, "No, we're going to let the chips fall as they may. But if it turns out to be an unacceptable scenario, then we're going to

come at you hammer and tongs. Maybe there is an alternative way of going, either raising the depletion number or looking at another variation." Another variation which was discussed before the state of Nevada said, "No, we want to pin the depletion donkey on you," was that, given allocation, Sierra Pacific was pushed very strongly to say, "We want to count reuse as two uses.

"Take an example on the allocation. You have 100 acre feet that you divert for a ski resort for soil erosion in the summertime. You irrigate the slope, you grow a little bit, and a lot of the water washes down into a pond. And then you reuse that water in the wintertime for snow making. We want to count that as two uses. So therefore, that use will count for 200 acre feet instead of 100 on your allocation.

California said, "Take a powder on that one. It's first diversion and that's it. How we use it is our business."

We were thinking that, okay, that whole effort died, a new way of counting allocation. But we suggested that if this depletion approach is such a tomato, maybe it's worthwhile to go back and revisit allocation. Maybe that is less pain on us as opposed to depletion. So we've kept that in mind, and we've also told that to

California, "There's no surprises. If this turns out to be a tomato, let's make sure we look at all our options."

Seney: One option might be reducing the gross diversion and forgetting about depletion on it?

Toy: Well, yeah. Just drop depletion criteria all the way and take a look at gross allocation and see what counts for a diversion. Maybe it's reuse. Some reuses would could for two diversions, as an example. But that would also say that California would have to back peddle on its position on allocation, but we were saying, "Which one has the least amount of pain?" (This is in negotiation.)

Seney: Now, at this point, you really don't know how much water you have a right to up there, do you, how much you can take off?

Water Use in the Truckee River Basin

Toy: Well, we do. To answer that, I think we have some understanding, but there's some big questions. We know what the allocation is of surface and of ground.

What we don't know, and even the team member from the State Water Board says, we

don't know the amount of the pre-1914 rights, which is water diversions before the enactment of the State Board, and so they have a water right before everyone else gets water rights through the board. So these early water right users, we don't know how much that is. There's been some licenses given by the State Board in that area that people haven't reported in a long time, so the number initially given to us was large, but we don't know if they're gone, if the use has changed. The part we don't know is, on the surface water allocation, we don't know how much is already being used and how much is remaining.

On groundwater, that's a completely different story in California in that there's no laws essentially governing groundwater, so the overlying landowner has a right to pump groundwater.

Seney: There's just voluntary reporting to the Water Resources Control Board when you drill a well, right? Do you have to report that?

Toy: I think there's some licensing, permitting, I'll say, to sink a well either on the county level or the state level, and in there that you show well capacities. But you don't report usage beyond that licensing process.

So there's an unknown as to how much groundwater is being pumped, but you do know it's only pumped where there's aquifers or hard rock, which is unique to the Sierras. That state-of-the-art is developing more and more, where you're finding fissures, where you're putting a pipe down and if the fissures are deep enough and close to a lot of other fissures, you may have a pretty good water supply. But it's a whole new state-of-the-art.

So the bottom line is that the State Board has done an assessment of what they know and they don't know, and they've made assumptions and they've taken water use, water purveyor information, and said, "How much is the basin using now, the Truckee River basin?" And the answer is, somewhere between 4,000 to 6,000 to 8,000 acre feet of both surface and groundwater, and looking at the 32,000 allocation, given all the unknowns, we think there's sufficient water for all of us.

Seney: For the foreseeable future.

Toy: Yeah.

Seney: Forever maybe, even.

Toy: Probably forever, which is not true of the Tahoe

Basin. But for the Truckee Basin it says, number-wise—forget about where the water is. Number-wise, it looks like we're good forever.

Seney: I asked you this question, which clearly I didn't have right in terms of the certainly you have up there, because that's what 101-618 was promising to California, and the rest, too, was, "Let's put to bed all these questions about the allocation at Lake Tahoe, about the right to divert in the Truckee River basin and other places.

Toy: Absolutely. Certainty is the big benefit—the number, plus the certainty of getting it. And the reason why we're getting certainty is that it's really due to the aggressive legal actions of the [Pyramid Lake] tribe in the late sixties to mid-seventies. They contested every water right application on the state side, California side, and basically bound up the State Board to issue no new water rights. So as far as surface water diversions went, they stopped on the California side, and everyone had to go to finding ground water to find new water supplies. So the benefit of the Settlement Act is that it requires the tribe to pull back all those legal actions to allow the normal California process to begin up to our allocation. That is certainty. That's clearly a benefit, that California sees and we see. No doubt about it.

Seney: But I guess I'm saying that, what is the depletion number going to be and how big is it? That reintroduces uncertainty, doesn't it, until you get this new TROA?

Trying to Establish Certainty in Water Allocations

Toy: That does. We have like the preliminary study, that we just saw the first roughs of last week. It seems like depletion may not be a problem as far as will the allocation be the limiting factor or the depletion factor. And so that's answering part of the problem, part of our question, but we're still concerned that it's based upon a lot of estimates and guesses.

Our view that the state-of-the-art on information is very low is accurate. So we're still concerned. We had some questions of the study, and the consultant has to go back and look at some refined numbers and get more input from some locals to fine tune. But our sense is, it's not a blockbuster. I think depletion we can deal with.

Seney: You think it's going to be all right, then?

Toy: We think so.

Seney: You know, that 17,600 number is here, and I

must say, even though you've gone over it with me a couple times, and maybe it's my thick skull, I'm not quite grasping how—are you going to be able to take, you think, all that 32,000 acre feet because enough is going to get back into the river to satisfy Sierra Pacific Power or state of Nevada, Pete Morros, the tribe?

Toy: Yes. And our study says that, based upon the current use, the depletion is roughly about 45 percent. So assuming the same uses run out through time and it's just more water within those uses, we think that it's going to be, depletion's going to be in the 40 percent. It says that we will never hit a criteria. We'll hit the full use. That's our reading of what this little study says.

Seney: And again, it goes back to what you said about the interstate allocation under the interstate commission. In fact, I'm going to be interviewing later this week the chairman of that commission, who's still alive and well and lives in Alpine County, and I'll ask him about depletion and all these kinds of things. I'm glad you mentioned it to me. They were going to do something about depletion and so forth, and it was aimed at 16,000 acre-feet. But they said, "Let's just double it and forget about depletion." So you're getting pretty much back to the number they thought should go back into the

river.

Toy: It seems like it. I mean, the logic has a theme to it. And that's where Nevada was coming from. The intent was always to have 16,000 being used in California and the rest would flow down the river, and we never could solve it, so that's why we agreed on 32. So that's why we came back to the 16, 15, 17,000 number again.

Seney: So it looks like you'll be able to finesse this to get back, after a lot of teeth-gnashing and palpitations and upset, to where it was to begin with.

Toy: Yeah. But how we got there is the part that really angers us.

Seney: I can understand that. I mean, you want to think that the state of California is going to be looking out for you, and if they say, "Don't worry, we handle this," you don't want to have to worry as they handle it.

Toy: Yeah. And again, they did something unilaterally, and then we feel like we're pulling their bacon out of the water.

Seney: Well, isn't the lesson here, really—and one you've learned, I'm sure, before—you're going to

have to look after your own interests and not depend on somebody else to watch for you.

Toy: Absolutely. Absolutely. And we understand that during the implementation time. Because here we've been focusing only on water resources and water supply to our area, and just as big as that issue is, I'm sure Kathleen talked to you about the fish and wildlife and recreation. We're talking, will we have water in the streams, flowing down the streams, which is mainly releases for Nevada—by and large, it's going to be releases for Nevada. Will we have sufficient flows in the river to sustain a fishery, which in the summertime is one of our biggest attractions for our recreation industry in all three counties.

We're just as concerned about that, and obviously there's competition between releases in the rivers balanced with holding water in the reservoirs for people to ski and to fish there. You can't have one without the other. So our recreation industry is also at risk and controlled by the releases from another state. We wanted assurances that they would have exchanges—"they," the Nevada parties—amongst themselves to meet our in-stream goals and our lake level goals, and we're still not comfortable that those assurances are real and binding.

Seney: I think as I went by Tahoe City today, there was maybe one gate open on the dam at Tahoe City, and the flow is very low in the Truckee River and will remain very low until the rains begin, I guess, and the natural inflow begins to occur. You'd like to see it run differently than that.

Operating the Truckee River on a Different Basis

Toy: Yeah, and there's no one-minute answer as to how I would like to see it run differently, because clearly Lake Tahoe is the biggest reservoir, but only [the top] six-feet ~~deep~~ [of water can physically flow down the Truckee River].

There's other reservoirs where the Nevada interests draw water out of, and there's agreements, and I think they're good agreements, that say, in the interest of trying to keep the big reservoir as stable as possible, that they're going to have releases from the other reservoirs downstream. Up to a point, that can happen, because there is mandated how much flow has to be at the river almost by the state line.

Seney: The Floriston rates.⁶

Toy: Yes. There's some balancing as to how the water should be released to meet the needs down the river.

Our concerns are not as much during the summertime, I suggest, but it's during the fall and winter, when they start storing water in anticipation of the needs for next year and trying to second-guess the weather as to how much it's going to lend, is that we're concerned that when they have the lake levels too high, where they've guessed wrong, that with a storm coming through we have shoreline damage and erosion, and we suffer. We, California, suffer. Unfortunately, Nevada views storage in Lake Tahoe as a water supply issue and not a flood

6. "Floriston rates are the rates of flow of the Truckee River at Floriston, California, as actually measured at the U.S. Geological Survey stream gaging station near Farad, California. Floriston rates currently vary between 300 cubic feet per second (cfs) and 500 cfs depending on Lake Tahoe elevation and season. The Floriston rates required that there be a mean flow of water in the Truckee River near Floriston of 500 cfs during the period from March 1 to September 30, and 400 cfs between October 1 and the last day of February. This agreement required that if there was insufficient flow from the remaining portion of the Truckee River system to meet the Floriston rates, water would be released, if possible, from Lake Tahoe to maintain those specific rates of flow." See Summary of Truckee River Operations, www.waterboards.ca.gov/waterrights/water_issues/programs/water_quality_cert/docs/farad/deir/appendixb.pdf. (Accessed 1/2019)

control issue. David Antonucci, I'm sure, gave you a very detailed story of that.

Seney: Yes, he did.

Toy: While we are sympathetic and in beat with David Antonucci, that's part of Placer County, and our two agencies are very aggressive in making sure that Nevada State folks honor our shoreline interests and also consider flood control with their water supply issues. We don't want to gut their water supply issues. That does not make any sense. Plus, it's not doable. This is physically not doable, and the courts have said it's not.

Seney: And there are so many legal constraints on the operation of the river, right.

The TROA EIS and EIR

Toy: But we believe that there is, with an open mind, a better mix of their needs and in consideration with flood control. To date, Nevada State interests have not been open to discussing that issue within TROA. Hence; when we have been commenting in the E-I-S/E-I-R [Environmentmenal Impact Statement/Environment Impact Report], we've been injecting our arguments, especially when

the E-I-S says that flood control is okay, and they say it in five, six sentences. I use the word euphemistically, okay, or adequate.

I challenged their conclusion based upon their lack of information, and I say, "What about Lake Tahoe, that doesn't have any flood constraints, and use the information of the floods of '97. Use that information record, and you tell me if it's okay." I say, "Use more information, and you do your analysis to reach a conclusion. I suggest you've done an inadequate effort on that area."

Seney: That lake should have been drawn down more at that point, from a flood control point of view.

Toy: Yes. And there are some real reasons why. I don't think anyone on God's earth could have anticipated the weather patterns and the snow patterns. But we bought into a problem based upon the operating mentality and the mechanisms and the laws that govern water supply building up and flood control balancing. And if you had a different paradigm, we could have had maybe a different result, we think a much different result. So that's where we're coming from.

Seney: I want to ask you about the snow making and depletion and that, but as long as you raised the

E-I-S, what's your overall reaction to the TROA E-I-S, that process which mandates that both the TROA be negotiated and the E-I-S prepared simultaneously.

Toy: My sense was that the—my gut feeling of the E-I-S [tape interruption]. It was a lot of information, a big report, done by a group out of Denver, essentially, that when you measured the heart of the melon, there was very little substance in it. It was a very cursory discussion of the issues, and the thought was by all the parties is, "Let's get the E-I-S done."

We got the negotiation, by and large, done. All the issues were agreed upon in principle, and essentially, short of mitigation of an E-I-S document, that it was just fine-tuning of the words to match the principles and they were done. So I think the basic interests of all the parties was, "Let's blast through the E-I-S. If we have to deal with any E-I-S issues, so be it." But I didn't see a real vigorous E-I-S.

One of the issues that was near and dear to our hearts was on the flow standards, the minimum in-stream and desire and things like that. They were only goals at this point, and their balanced with there's a voluntary effort of all the Nevada parties, essentially, to meet those

goals, but they were constrained by the act, that said they could not do something that harmed their water rights.

In between there is a lot of uncertainty. We, in California, said we would some mid-course corrections to see if our initial view as to how it would work, if it didn't come to fruition, that we'd be able to re-visit it, still hold their water rights intact, but find out what didn't work and fix it. Nevada parties came from the point of saying, "No, we want one shot at this TROA. We don't want any further obligations, any twists and turns in the story. We want to fish and cut bait now and get on with it."

The E-I-S speaks very much to what's the story on assurances, what is modeling, say, of assurances, and the E-I-S did a poor job of depicting would the goals be pursued and attained or would there be environmental impacts? It breathes through it with a very light brush and said, "Looks pretty good. In fact, it'll be better than today. There'd be some down sides, but, by and large, it would be better than today."

And we're saying, "That's too cursory. Tell us more of the story. What are the good sides? What are the down sides? You've reached your conclusions with inadequate documentation and

support."

So that's where we came down hard on from the in-stream story. We're very much concerned, as Craig Woods is, in that flows would change, the flow pattern would change, and it would be decreasing in certain months, in certain hydrologic conditions, different than now. That causes some major problems on the wastewater side in Placer County in that we don't have that dilution water to meet our goals downstream.

Seney: This is for T-T-S-A.

Toy: T-T-S-A. And so when we talk anecdotally with the other parties, they say, "Yeah, you've got to use your water to make it up."

And we're going, "That's a problem. It's your voluntary releases are causing us to use more of our water." They're saying, "Yeah, and that means we're getting more water."

We don't like it from that side, and that could be an added financial burden, that T-T-S-A will have up their discharge treatment requirement standards to meet lower flows and a harder test on the river. We're saying, "California, you've got to realize that is a

problem and that's against our interests, and you've got to deal with that."

California has not dealt with it very well to date. So our view is that we're going to explore that in the E-I-S process to get more information, and then we're going to go back and say, "We have an issue, California, and we would you to re-visit it and take it on." And as others come up through the E-I-S process, we're going to be doing the same thing.

Seney: In other words, on this issue you might come to a point in terms of mitigating water quality problems where you're just having to pump water and put it into the Truckee River above the treatment plant in order to get the proper dilution during periods of the year.

Toy: That's right.

Seney: Which would be charged against your allocation.

Toy: Absolutely. We think that's not acceptable at this point, when we see that we could be placed in a box with the other parties managing the 90 percent of the water in the river—

END SIDE 1, TAPE 2. AUGUST 26, 1998.

BEGIN SIDE 2, TAPE 2. AUGUST 26, 1998.

Seney: You were saying it's a hard game. Let me say, on this context, I've interviewed Bob Pelcygar⁷ and Joe Ely⁸ and I'm going to see Mervin Wright tomorrow morning, and I've interviewed Norm Harry.⁹ Did you know Norm?

Toy: No.

Seney: He was tribal chairman, maybe, just as you were getting interested in these things.

Toy: I know Mervin.

7. Robert Pelcyger participated in Reclamation's Newlands Series oral history project. See, Robert (Bob) S. Pelcyger, *Oral History Interviews*, Transcript of tape-recorded Bureau of Reclamation Oral History Interviews conducted by Professor Donald B. Seney for the Bureau of Reclamation, in 1995 and 2006, in Reno, Nevada, and Boulder, Colorado, 1995 interviews edited by Donald B. Seney and all interviews further edited by Brit Allan Storey, senior historian of the Bureau of Reclamation, 2013, www.usbr.gov/history/oralhist.html.

8. Joe Ely participated in Reclamation's Newlands Series oral history project. See, Joseph (Joe) H. Ely, *Oral History Interview*, Transcript of tape-recorded Bureau of Reclamation oral history interview conducted by Donald B. Seney, edited by Donald B. Seney and further edited and desktop published by Brit Allan Storey, senior historian, Bureau of Reclamation, 2011, www.usbr.gov/history/oralhist.html.

9. Norm Harry participated in Reclamation's Newlands Series oral history project. See, Norman Harry, *Oral History Interview*, Transcript of tape-recorded Bureau of Reclamation oral history interview conducted by Donald B. Seney, edited by Donald B. Seney and desktop published by Brit Allan Storey, senior historian, Bureau of Reclamation, 2012, www.usbr.gov/history/oralhist.html.

Seney: Yeah, and Bob Pelcygar, I'm sure you know.

Toy: Sure.

Seney: I thought I was going to see Gordon DePaoli¹⁰ this week from Sierra Pacific Power, whom I sure you know.

Toy: Yes.

Seney: I've interviewed Sue Oldham and Joe Gremban, who would have been before your time.

Toy: Yes, he is.

Seney: He was president during the preliminary Settlement Agreement. They're lobbyists in Washington, D.C., and they're very able people, as you all are. I mean, I'm very impressed with the quality of people on this side, as well. Dave Antonucci is very sharp. I thought Kathleen Eagan was, Gary Elster.¹¹ You know, you've

10. Gordon De Paoli participated in Reclamation's Newlands Series oral history project. See, Gordon De Paoli, *Oral History Interview*, Transcript of tape recorded Bureau of Reclamation Oral History Interview conducted by Donald B. Seney, edited by Donald B. Seney and desktop published by Andrew H. Gahan, historian, Bureau of Reclamation, 2013, www.usbr.gov/history/oralhist.html.

11. Gary Estler participated in Reclamation's Newlands Series oral history project. See, Gary S. Elster, *Oral History Interview*, Transcript of tape-recorded Bureau of Reclamation oral history interview

(continued...)

got sharp people on both sides.

Various Interests Working to Reach an Agreement

Toy: Oh, yeah, absolutely. And we're all working hard for our own interests. I think we're all mature and able, and we all know what's at stake. We all know how to negotiate hard, but keep in mind that the ball is to get an agreement, because it's worse without an agreement. That's the name of the game, and we're willing and able to participate in a hardball game.

When I say that, you know, we've worked through some of the standards that are going to implement certain principles in our [water] well standards, let's say, and we've sat down with Sierra Pacific and we've worked out stuff that's implementable and fairly simple and it gets the job done. We're not trying to make it just more complicated. There's interest on both sides to be able to hash out differences in a logical fashion. The capabilities are there. That's why I bristle at rolling over so early, when we haven't explored all the options, but dropped to

11. (...continued)

conducted by Donald B. Seney, edited by Donald B. Seney and further edited and desktop published by Brit Allan Storey, senior historian, Bureau of Reclamation, 2011, www.usbr.gov/history/oralhist.html.

our knees.

Seney: Well, I know Dave Antonucci said to me, and I know he's said to you, that he thinks California should be the 800-pound gorilla here and has told John Kramer, and maybe you have seconded his motion here, "Tell them, no, we won't do this. We won't sign it."

Toy: I've told them point blank, no. I've asked staff, on the E-I-S, I think California should be an 800-pound gorilla. And California is on the E-I-S steering committee, and yet their view is, "Well, you know, we don't have the finances, and, really, we only have one-tenth of the water. So we don't have much of a say in this matter. It's mainly driven by the feds, since it's all their budget."

I disagree with that philosophy. The reality is, yeah, it's the fed's budget, because it's implementation from Congress. But we still have our rights to stand up for, and if we're strong enough and if the feds say, "That's a great issue, but we're not going to fund it," then California has to fund it, and maybe even come to the locals. And if we see the need, maybe we'll step up to the bar, as you guys have to step up to the bar. But you've got to be aggressive. I think that much of the staff has not been involved in this arena, and they've been mainly

working on local issues and are being too kind. So that's an example of them not being aggressive.

Or, as another example, I think, of D-W-R [California Department of Water Resources] staff not being aggressive is, we have an agreement, in principle, that we want to do this, and we're working out the details. California says, "Since we have an agreement, we're just going to stay within this box of agreement."

Sierra Pacific comes in and says, "We've thought about it, and there's a possibility if and if and if, this could happen. We want it addressed now. It's basically out of the box." And I've told them, "Say no. It's out of the box. We haven't agreed to that." And California, in a naive sense says, "No, they asked us, so we deserve to give them an answer, an engineering answer." I said, "Absolutely not!"

Bob Pelcygar has been grand with his Khrushchev approach of taking his shoe off and saying, "No, no, no, I won't accept that." I don't like it, but he's clear as to what he's saying. Why do we have to—why can't we say no, also? Our guys are too nice. They say, "Well, maybe we can meet them half way." No. The answer is, on this particular issue, "Say no." Give them

an answer.

Seney: Are you just saying in general or do you have an issue in mind?

Toy: I'm just saying in general, because there's a minutiae issue and there's many of those little issues that we worked through. The Sierra Pacific folks have spent a lot of time thinking through all the issues, and they see a lot of scenarios. What they call their mid-course corrections, they're putting them in all now. Where we're saying, "Well, it looks okay. We're just go with this set of language."

I'm saying, "They're doing their mid-course correction now because they're thinking through all these issues thoroughly, and we are not. We, California, we're not being aggressive enough, because we're afraid that, 'Well, we already agreed to the issue in principle. We can't add any more to it.'" I said, "My God, they're doing it all the time."

So the bottom line is, we should be an 800-pound gorilla, but we're not, and we keep on asking ourselves why. We have written letters all the way up to Kennedy, who's the head of—

Seney: David Kennedy?

- Toy: Yeah, David Kennedy, the Department of Resources, and we get back the same answer, "They're do a good job. We're doing a good job, blah, blah, blah. We're staying the course." So short of going to the governor, we have gone up the chain of command and we have tested the water, and what we read in it is what I told you earlier, that this is the level of commitment and of push they're putting into this particular project, and the reading, to us, is pretty clear.
- Seney: If they don't, say, on depletion, if it doesn't work out the way you hope it will and want it to work out, and they're not helpful to you at D-W-R, who are you going to go to then? Are you going to go the governor? Can you go to the legislature?

Who the Local Interests Can Appeal to for Help

- Toy: We don't have a collective answer to that. There's the State Water Commission we can go to. We can go to the legislature, to the Water Resources Committee or whatever it's called, and ask for a fair hearing there. If we sway them, maybe they have a sway on the governor signing off on the agreement, because he's the one that will sign for California. That's the way I think we'd step up to the governor, and finally, at some point, if there's momentum, is to talk to

the governor. But it's past the staff. We have to go to the elected officials. That's our reading.

Seney: You're reluctant to do that unless you have to.

Toy: Absolutely. Absolutely. But that's where we're at, how much can we push? We have worked with David Antonucci through our State Water Association, and who is very close to Kennedy, and basically Kennedy came back and said, "The train's left the station." I don't think we need to meet.

Seney: You're too late.

Toy: Yeah, too late. And so, you know, you get those signals, you have to read them, and that's how we're taking it. That's why we say, as far as state staff is concerned, they have their marching orders, and I don't want to demean some of these state teams, because they're very competent, and given their orders, maybe that's as much as they can tell us, and that's a reality.

Seney: There are two more things I want to ask you about. One I mentioned was the snow depletion in the ski resorts. The other one you mentioned, and that's this whole question of wells and the nature of wells. Whichever one you want to start with first.

Impacts of Well Drilling on River Flows and Demands

Toy: Well, the well story is an interesting one. The way the wells are framed in the Settlement Act is that we can place a well anywhere where—let's see, how does it go—where it doesn't impact the flow of the river, as much as practical, which essentially says, in its simplest definition, "You can't put a well in the middle of the river and have it a foot below the base of the river. You're essentially taking the surface water." But it's very loose in that it only talks about the design of the well, and "much as practical" has some loose ends to it. So it's in California's favor.

But when we looked at that, we said, "Okay, we have two ways of going. We leave it that way, and we just wait for the challenges."

Seney: Because there can be challenges. Those are built into the statute and the TROA.

Toy: Absolutely. Wait for those challenges, or we negotiate an insurance policy that says we will develop safe drilling zones that are exempt from challenges and all other areas are open to challenge, and so that we get some assurances, but we're going to pay for those assurances, be it we're going to report to the other folks our

intentions and we'll have a prescription that in every one of these safe zones, stay away from a stream, river, lake by certain feet.

So we said, "That's worth talking about," and it was in our interest. We were supportive of that, and we worked through that issue. We're in the last details of it now, and it's worked. California's been supportive of us, and we have worked up something that basically all the zones are basically zones of each purveyor, or of each county such as Sierra County. But we have basically blocked out all other areas, and we can live with our self-imposed prescriptions, and what we get is freedom from lawsuits, from challenges.

We've also worked through that if there's a well driller who ducks the requirements, then he will be treated in a criminal fashion, as opposed to being protected. That was one of our issues, do we protect them in our negotiations or do we say, "No, we treat them as anyone else," that he will be asked to perform certain tests, and it's going to be on his nickel, I suppose, to a challenger. He'll have to do it on their nickel. We said, "No, it makes sense. They will have to do on their nickel."

Seney: Bring a consultant in to see if they're in violation.

Toy: Right. And so we have worked through that, interestingly enough through the negotiations of what will the safe zones look like. The state says, "Well, we'll lead on that negotiation." We said, "No, we'll do it." And right up to the moment when we were around the big table, the state said, "We'll do it," and I said, "No, first is Alpine. Alpine General Manager, please get up." And he went to the board, and we got on chalkboards and framed out the agreement and massaged it, let him speak. We went for every area, went around the table. And we said, "Thanks, state, but in reality is, you need us to be lead, and you tell us if we're bouncing into any state laws," because there were some legal language that the state, we needed them on. But as far as the impacts on the ground and how to describe that, let us be lead. They ended up saying yes.

So we formed, in a fashion, our coalition and how we presented the information. Essentially, we used their weakness and we used our strengths, and it worked out fine. So that was, in my view, a success story of how we can put in the well language.

Seney: And you can still put them in outside these zones, as long as you're willing to go through the challenges and all that kind of thing.

- Toy: Right. And there you're only protected by the act. And that remained. We made sure that in those other areas, we didn't lose anything from the act.
- Seney: And you said Sierra Pacific was reasonable in dealing with this and willing to go along, and they liked it, too.
- Toy: Yes, they were. The bottom line, they were. Sue Oldham was the true thinker, and she was looking at scenarios. And it started getting very complicated, and Janet Carson,¹² their lead engineer for Sierra Pacific, said, "I disagree with my attorney, and we're going this way with the California purveyors." So it was on reason, in a bounce, so it worked out just fine.

This issue was much more of the reasonableness of a water purveyor to water purveyor and less politics, per se. So it worked. It was a good story.

Water Consumption in Snow Making

12. Janet Carson participated in Reclamation's Newlands Series oral history project. See, Janet R Carson, *Oral History Interview*, Transcript of tape-recorded Bureau of Reclamation Oral History Interview conducted by Donald B. Seney, edited by Donald B. Seney and further edited and desktop published by Brit Allan Storey, senior historian, Bureau of Reclamation, 2011, www.usbr.gov/history/oralhist.html.

Snow making, I really know less about that.

Seney: You only have Northstar in your county, or Squaw also is in your county?

Toy: We've got Northstar, Squaw, and Alpine.

Seney: Okay. Obviously, I'm not a skier, or I would know that.

Toy: We have three major ski areas, and the issue—a couple issues came out. One was the one that, overall what was the water use in snow making, and that affected across on the board on our allocation. David Antonucci was very instrumental in working up studies, and I'm sure he told you the story on that one. I wasn't involved, essentially. David was lead.

Seney: I'm trying to figure out what the loss is on snow making.

Toy: The other issue was interesting and resolved just in the last couple of months, and that was an issue that was in Placer County, but it involved the ski resort that has shoulders on both the Tahoe Basin and the Truckee River basin.

Seney: Which one is that?

Toy: That's Alpine. The question there was, that ski operator, if was making snow on the Truckee side and it blew over to the Tahoe side, how do you treat it? Can he do it, and how do you allocate for it? And by the way, he's already put in snow making equipment now that goes on both sides. How do you treat that? We don't want to rip out his equipment.

Seney: We're both sort of smiling here, because these things get so detailed.

Toy: Right.

Seney: Down to the proverbial gnat's eyebrow.

Toy: Absolutely. And so there was the issue of, how do you treat the water use between this arbitrary line in the two basins? Plus, there was the backlash in the Truckee Basin saying, "Wait a minute. Now you're in Placer County. You've got hats on both sides of this issue, in both basins. But the reality is, the more water that's allowed to go from the Truckee Basin to the Tahoe Basin—which could help the Tahoe Basin folks, because they're limiting on their allocation—takes away from everyone else in the Truckee Basin.

And Kathleen, my good friend, is saying, "Mal, we've got to talk this through." I said,

"Absolutely. Whatever's agreed upon, we have to make sure everyone in the Truckee Basin understands, because it could be one drop of your water, at the minimum."

And so my job, since I was clearly neutral, was to make sure that I understood it and my legal counsel was involved in it, that we were there more as a neutral party. We understood and we approved the words. So there was some fine tuning of it.

And then David Antonucci calls back and says, "I think I'm happy with it, but I want to make sure that you and Janet Goldsmith understand it and think that we don't have any loose ends on it."

Seney: Because she's also their attorney.

Toy: Right. And we did it on our nickel. I said, "We'll handle that under our contract." And we had it tested a couple of ways, and then I made sure that when that was resolved, that when the state team came to our water group, when we went down all the issues I said, "Let's spend some time on this one to make sure we all understand it here." I felt that was part of my obligation. We did talk through that, and as the words are going to be refined, I think we'll re-

visit one more time to see if there's any little twists. But there was an issue that I was more of a facilitator than an interested party. My interest was to make sure that Placer County's interests were held whole and that we made sure that our neighboring counties understood where we stood. And so I felt we reached all that.

Issue of Sierra Lakes Levels

Another burr in my saddle of what I view as how David Antonucci, Kathleen, and I worked out an inner-basin, inner-county issue, where you need to find a balance point. We had the experience, and we worked it through. The state has a problem now, that was raised through the E-I-R/E-I-S, that we were aware of, and it's the issue in Donner Lake. It's the residents who want to see Donner Lake levels always high up through Memorial Day, where California Fish and Game and the fishery people want to see releases out of the lake, down Donner Creek, because Donner Creek is one of the three remaining rookeries, or hatching areas, for trout, clearly competing uses.

The state's come to me and said, "What do you think the answer is?" I said, "You've got to get in there and understand the competing interests, and, if anything, make sure the agreement, TROA, is flexible enough in the

future that it doesn't gore one side or the other. The interests are not the same. People wanting high lake levels, where the state, as a regulatory agency, could demand flow regimes. So you have to act as a facilitator." They said, "No, no, we've just got to go in there. All their letters, which are all form letters (I'm paraphrasing them), they have all these wrong facts." I go, "Fact telling them is not going to help facilitate. It may piss them off, at the least, or it may help to get them to where you want them to be. But you're balancing interests, and you have to reflect both interests."

My view is, the state staff doesn't have a clue as to how to act in that role, and yet Kathleen, as an elected official, did that every day in her constituency. We, as a water purveyor, we have a variety of interests within our constituency, and us representing countywide, there's local, area interests. And David Antonucci understands that. So we're sensitive to it, and we recognize the symptoms of a problem and how to deal with it. The state, they just have not been in that arena long enough, and yet they are there to try and solve that problem. So that's one of the things that we're now stepping into is, how do we reconcile the diverse opinion expressed in the EIS/EIR, and how do we get a TROA signed? It's going

to be interesting.

END SIDE 2, TAPE 2. AUGUST 26, 1998.
END OF INTERVIEW